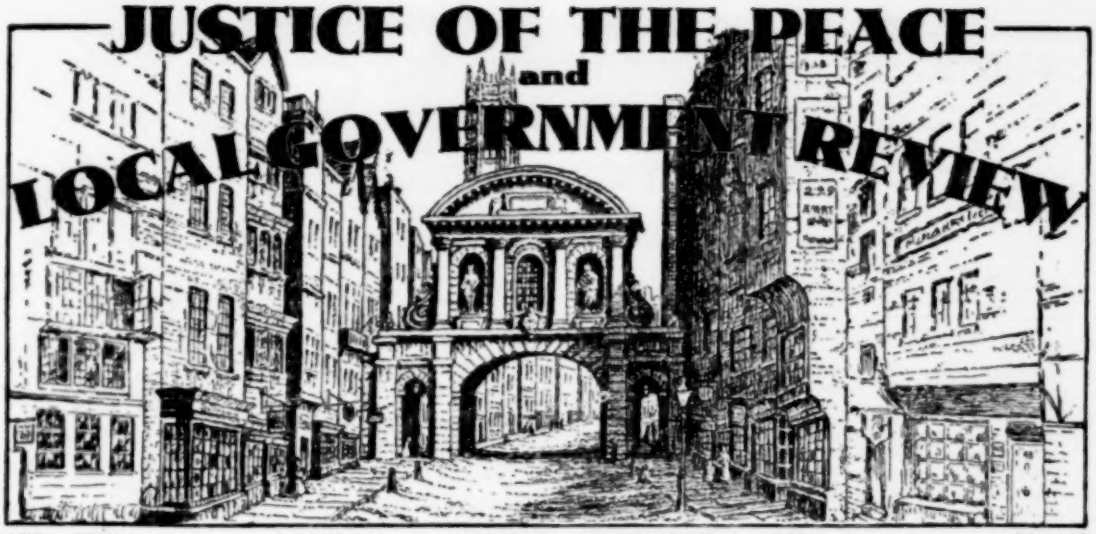


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## REPORTS

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Town Hall,
Huddersfield.

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APPLICATIONS are invited for the appointment of Junior Assistant Solicitor in my office in Grade VI (£645–£710 per annum). Previous local government experience is desirable but not essential. Applications (no form issued), stating age, education, qualifications and full details of present appointment and past experience, together with the names of two referees, should reach me not later than Wednesday, December 12, 1951.

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The Courts,
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November 29, 1951.

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Clerk to the Justices.

Justices' Clerk's Office,
35, Market Street,
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Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

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# NOTES of the WEEK

## Previous Conviction Disputed

It is not often that after conviction a prisoner disputes previous convictions alleged against him, for very few mistakes are made, and identification being often a matter of fingerprints, mistakes are exceedingly unlikely.

In a case at Gloucester Quarter Sessions, the proof of a previous conviction was a matter of importance, not only on the general question of character and antecedents, but also as a fact rendering the prisoner liable to be dealt with under s. 22 of the Criminal Justice Act, 1948. Section 23 relates to the proof of previous convictions for the purposes of ss. 21 and 22 of that Act. Section 23 provides that unless a previous conviction is admitted by the prisoner the question shall be determined by the verdict of a jury. In this instance evidence of fingerprint identification was given, and the jury found the conviction proved.

## The Question of Sentence

It has often been said that the task of trying the issue guilty or not guilty frequently proves much easier than that of deciding upon sentence or treatment, and there are those who advocate the separation of the two functions, assigning to some kind of expert tribunal the duty of dealing with those found guilty by a court. It is indeed a difficult matter for any court to decide upon the length of a sentence, whether to impose a fine or to make a probation order, unless certain principles have been arrived at as a general guide. Unless magistrates have a clear idea of the objects of punishment and other forms of treatment, they are likely to be guilty of inconsistency and inequality in their sentences.

The difficulties were indicated, and valuable guidance was afforded, in a recent case before the Court of Criminal Appeal, *R.* v. *Ball* (*The Times*, Nov. 20). On the face of it, here was a case of inequality of treatment between two prisoners, but there was a reasonable explanation. The appellant had been sentenced at Assizes to five years' imprisonment upon charges of burglary and larceny. An older man concerned in the same offences had been put on probation, though, it was said, he had a worse record than that of the appellant. Counsel urged that the sentence on the appellant erred on the side of severity.

Hilbery, J., in the course of delivering the judgment of the court, restated principles to be observed in passing sentence. One consideration was public interest.

The criminal law was enforced with the object not only of punishing but also of preventing crime. A proper sentence served the public interest in two ways: it might deter others, who might, if a negligible sentence was imposed on a criminal, be tempted to turn to crime; and it might also deter the particular criminal from committing further crime. Public interest was best served if a criminal was induced to turn to honest living.

The law did not, therefore, fix a definite sentence for a crime, but fixed the maximum sentence, leaving the court to decide what was the proper sentence in the particular circumstances of each case, and a court had the right and duty of deciding whether to be lenient or severe. It was for those reasons that before passing sentence the court heard evidence of the antecedents of every convicted person.

It followed that when two persons were convicted together it was often right to discriminate between the two and to be lenient towards the one and not to the other: for the character and bearing of the one might indicate that there was a chance of his reform if a lenient course were taken. The argument of one prisoner that his heavy sentence must be reduced because a fellow convict received a light sentence had of itself no validity or force.

The appellant's record showed that it was impossible to say that in the circumstances there was anything wrong in principle with the sentence which was given, and the court saw no reason, although the sentence was somewhat severe, for saying that it was so severe as to be wrong in principle.

## School Reports

Written reports from headmasters of schools are constantly considered by juvenile courts and, together with reports from probation officers, may have a considerable influence upon the court when determining how to dispose of a case. It hardly needs stating that all such reports should be careful and accurate, and it can safely be said that in general they are.

An exception came to light recently, not before a juvenile court, but before a court of quarter sessions, when the learned Recorder criticized a headmaster for having given at different times two conflicting reports. A report furnished to the police, evidently after the boy had been charged with an offence, was stated to be that he was "anti-social, often a bully, destructive and sly," yet it appeared that he had previously given the boy a good character and wished him luck when he was leaving school. When asked: "Did you think you were doing your duty to the general public by putting your first report forward?" the schoolmaster replied that it was a report to the parents, but admitted that it might be shown to a prospective employer. The Recorder described it as grossly misleading, and the school master admitted that in a certain way it was, adding that he always tried to give a boy the best chance he could.

The desire of a teacher to give his pupil a good chance is commendable, but if reports are to be of any real value they must be candid. They may have to state certain faults observed in a boy, but they should certainly contain what is good about

him as well. The fact that a written report may be shown to a prospective employer should never be overlooked, for, as the learned Recorder observed, there is a duty to the general public in these matters. A schoolmaster's good nature ought not to blind him to the need for issuing only such reports as can be relied upon by any whom they may concern.

This is not the first time we have heard of such an incident, though we believe such cases are very rare. Some years ago we heard of a case in which a very indifferent report from a headmaster was read out in a juvenile court, to the evident astonishment of the boy and his mother who produced a most satisfactory report given when the boy left school. A representative of the education authority made the simple comment: "But that report was given him for the purpose of getting a job."

### Access to Children

Magistrates may be called upon to make orders under the Guardianship of Infants Acts or under the Summary Jurisdiction (Separation and Maintenance) Acts, not only as to the custody of children of a marriage, but also as to access to such children by the parent not having custody. Disputes about access, once the question of custody has been settled, may not be common, but they can be difficult, as appears from the report of a case in the *Honorary Magistrate*.

A New Zealand stipendiary had before him an application for an order as to access to her children by their mother, who was a patient in a mental hospital. The father had placed them in an orphanage, the matron of which felt that it would be undesirable for the children to be taken to see their mother, and suggested that she might be brought to the orphanage to see them. The father of the children also objected to any proposal that the children should be taken to the mental hospital.

The learned stipendiary magistrate, in his judgment, said that the possibility that the mother might make a scene at the orphanage and upset other children besides her own must not be overlooked. As to the children visiting their mother at the hospital he said: "They must know their mother is mentally ill, and no doubt they have a distorted picture of her. In point of fact, the majority of patients in a mental hospital are to all outward appearances ordinary normal people most of the time and retain vivid and accurate recollections of their families." The superintendent of the mental hospital had taken the view that although he could not forecast the reactions of the children or their mother in the event of an interview he thought "this very human request" should be allowed. He advised that, if it were, the hospital should be communicated with in advance so that the meeting should not take place unless the mother was at her best. The magistrate accordingly made an order giving access to the mother at certain specified periods, subject to the precaution suggested by the superintendent at the hospital.

### Commendation for Lay Justices

Although there are still people, whose opinions cannot be brushed aside as unimportant, who believe that the work of all magistrates' courts should be in the hands of stipendiary magistrates, there can be little doubt that the system of lay justices will continue. The office is of ancient origin, and good service has been rendered by the majority. Moreover, in recent years, there has been a definite raising of the standard of efficiency, and magistrates are showing a keen desire to acquire knowledge and experience.

As has often been said, cases in which lay justices are criticized, or even rebuked, by judges of the High Court, are given prominence in the press, while instances in which the judges bestow praise on justices for the way in which they have handled the case are all too apt to pass unnoticed. It is pleasant, therefore, to be able to refer to words of recognition uttered by Byrne, J., at the opening of the Nottinghamshire Assizes. "The work of the magistrates becomes more exacting every year," he said. "I know full well that lay magistrates discharge their vitally important judicial functions without reward, and in many instances at very considerable personal inconvenience."

The learned judge was addressing county justices who had followed the excellent custom of attending the Assizes. In returning thanks, the chairman of a county bench said the justices looked upon attendance at assizes as a sort of refresher course to help them in their work in the lower courts.

### Evidence and Law Reform

To a logician it may seem strange that lawyers can admit different standards of proof in a civil and a criminal case; in practice there may be less danger than there would otherwise be, because so many civil cases are nowadays heard without a jury. Yet is it less damaging to a man's credit to be obliged to pay £1,000 in a civil action, when his answer to the claim involves his probity, than to be convicted (say) of a technical assault? Whatever the answer in logic, the Probate, Divorce, and Admiralty Division has had to consider standards of proof in the Divorce Court: are divorce proceedings analogous to criminal or civil cases? Based upon a lecture delivered to inaugurate the Chair of Jurisprudence in the University of Bristol, Mr. J. A. Coutts has a paper on this subject in the *Modern Law Review*, which is likely to interest our readers called upon to deal with matrimonial cases before justices. He examines a number of judicial statements, directed especially to the comparison between proof in the divorce court and the standard of proof required in a criminal case, the standards turning partly upon the meaning of the phrase "satisfy the court." It is no doubt because of the peculiar nature of the issues to be tried in the divorce court, whether regarded from the public point of view or from the point of view of the individual litigant, that a rule or quasi-rule has grown up to the effect that the standard of proof there should be the same as in a criminal case. The paper is richly furnished with footnotes, embodying references to authority and some points of argument: indeed the relegation to footnotes of some of the learned author's arguments, which perhaps was due to his having prepared the paper originally for oral delivery, makes it rather difficult to follow. But it is an instructive and thought provoking essay.

In the same number of the *Modern Law Review* is a paper by Mr. G. S. Wilkinson, clerk to the Dudley justices, called "Reform of the Criminal Law," which is less solemn than its title would suggest. It is indeed exceedingly amusing. Many persons may not accept all of his comparisons, as where he suggests that attempted house-breaking or larceny may be more serious than attempted buggery, or that to steal growing fruit is "at least as serious" as attempting to procure a girl to leave the Kingdom with intent that she may frequent a brothel elsewhere. He has, however, performed a useful public service, and performed it none the worse for the humorous method of his treatment, by bringing together under one heading a number of the oddities which still haunt our criminal law. He justly remarks that some of the queerest survivals of old days have been done away with by modern legislation, such as the difference in the mode of swearing the jury in felonies and misdemeanours, but there are still too many irrational provisions in the statute law, and among survivals from the common law, which could well be done away with. We can, for example, see no reason why Parliament should not, as he suggests, assign to all offences of larceny the same maximum punishment and treat them all as one offence.

### Interpreting the Rent Act

At p. 529, *ante*, under the heading "Valediction to Widows" we noticed the decision in *Moodie* v. *Hosegood* [1951] 2 All E.R. 582, expressing satisfaction on two grounds. One was personal: that is to say because the House of Lords had upheld an opinion we had ourselves expressed, and in doing so had overruled decisions of the Court of Appeal, which we had not been in a position to question but had endeavoured to distinguish. The other ground was a general one, that the courts ought not to be too alert to find that Acts of Parliament mean something other than what they say. A large part of the occupation of the legal profession would be gone, if it were ever established in this country that Acts of Parliament, or statements of the law by the judges in past cases, must be taken at face value: few people, even among the lay clients who have to pay for settling arguable points of law, would really be satisfied, if they were deprived of the exercise of finding ways round and through the language used in legal documents. This process of distinguishing, explaining away, and finding reasons to put strange meanings on a word, can however be carried much too far. In some recent cases upon which we have commented we have suggested that the Divisional Court (in particular) has been needlessly unready to believe that Parliament can have meant what it said. In connexion with *Moodie* v. *Hosegood*, *supra*, Mr. R. E. Megarry has an informative article in the October issue of the *Law Quarterly Review*, entitled "The Rent Acts and the Invention of New Doctrines." He does not share our view of *Moodie* v. *Hosegood*, considering that the decisions overruled were to be preferred, and he discusses half a dozen other cases which he considers to fall equally within the heading he has chosen. The Rent Restrictions Acts have set out to control the intimate relations of many million people; while it would be ungracious to deny that they have given satisfaction to many, they have also revealed the hopelessness of dealing with those intimate relations by general enactments, which will always stand the test of practical examination in the individual case. For those concerned, Mr. Megarry's article, like his books upon the Acts, will be found helpful and suggestive.

### Royal Licences to Sue

Our magisterial and local government readers are, perhaps, not likely often to be called on to consider what happens when a person who is technically an enemy alien desires to bring an action in this country. The problem may, however, present itself to any of our readers who is in private practice, since he may have a client who has business relations, or had business relations before the war, with a person who was a German, Italian, Japanese, or as the case may be. After some conflicting expressions of opinion it was settled once and for all in *Sovfracht* v. *Van Udens* [1943] A.C. 203 that an alien enemy cannot bring an action in the courts of this country without a licence from the Crown. It is for the court and not for any government department to say whether a person is an alien enemy although, no doubt, a certificate or other statement from a Secretary of State would have great weight. Further, the disability exists even though the defendant does not wish to take advantage of it: it is a matter of constitutional propriety, and not of the protection of an individual defendant. This rule of the common law has caused inconvenience from time to time in the curious half light, neither war nor peace in an ordinary sense, which has persisted since 1945. An ordinary instance might be where a naturalized British subject of German origin wished (quite properly) to leave part of his estate by will to relatives in Germany, and it became necessary for them to take some proceedings in a British court to assert their claim under his will. He might, if he did not realize the difficulties to which such an appointment would give rise, have appointed a relative who was resident in Germany, or the old family solicitor in Germany, as executor of his will—when the executor would, before he could prove the will in England, have to obtain a licence from the Crown. These licences were granted by the Home Secretary and, although they did not issue as of course, we believe no unnecessary difficulties were created. There were certain inherent complications: for example, the resident in an enemy country had to have an agent here, and the agent had to satisfy the Home Office that he was really authorized to act. Practical difficulties were obviously less where Germany was involved than in the case (for example) of Japan, where necessary documents had to be transmitted so much further. A step towards the resumption of normal commercial as well as diplomatic relations, and consequently towards opening the British courts to German litigants, was taken when the Government announced in the *London Gazette* of July 6, 1951, that the state of war between this country and Germany would terminate on July 9. It was perhaps unfortunate that the Secretary of State for Foreign Affairs, when questioned in the House of Commons upon the effect of the *Gazette* announcement, said that it related to the Federal German Republic, thus leaving in the air the position of possible litigants residing in the Russian Zone of Germany. We understand, however, that a firm of solicitors (who had received instructions from such a person) have taken the matter up with the Home Secretary, and received an official assurance that in the view of His Majesty's Government this country is now at peace with the whole of Germany. While it would presumably, in view of the decision of the House of Lords above mentioned, be open to a defendant in this country to set up the defence (against a claim from a resident in Germany) that the state of war was still subsisting, and therefore that the German plaintiff could not sue without a royal licence, it is hardly likely that such a defence would be taken seriously by the court. For practical purposes, therefore, it may be taken that so far as concerns Germany a royal licence to sue in the British courts is no longer needed.

### Constitutional Episode

An episode in constitutional and legal history for which, happily, we have found no parallel was reported in the newspapers in the first week of November. This was an application to the Judicial Committee for leave to appeal from a conviction in 1942 by the Royal Court of Guernsey. At that time the Royal Court was functioning in territory occupied by the King's enemies, something which in itself is unique in the story of the British Isles. The German occupying forces were anxious for reasons of their own to interfere no more than military conditions made necessary with the institutions of the Channel Islands, and the ordinary law of Guernsey and Jersey remained substantially in operation. Eight members of the Guernsey police force were arrested by the German authorities, upon two charges, the one of breaking into German military stores and the other of breaking and entering various premises not occupied by the Germans, and stealing foodstuffs, wines, and spirits, therefrom. Upon the charge in respect of German stores there was a conviction by Court Martial, followed by a period of imprisonment and deportation. Upon the separate charge in respect of premises in civilian occupation, there was a conviction before the Royal Court functioning (practically) in the ordinary way. The newspaper accounts so far available relate only to an application to His Majesty in Council for leave to appeal against the conviction by the Royal Court, so that the full story has not

yet been printed, but the Attorney-General for Guernsey on behalf of the Crown has not opposed the application (and indeed was not represented in the proceedings at this stage), so that the statement of counsel for the applicants has not been challenged. This suggests that the facts of breaking and entering and removing property were not in dispute, though the evidence for the prosecution had been obtained by German methods which would not ordinarily have been admitted in the Royal Court any more than in Great Britain. Apparently the only defence which the men could have set up would have been that, in breaking and entering premises still in the occupation of their fellow countrymen, they were endeavouring to frustrate the occupying enemy, by removing the comestibles in question from enemy control—a defence which it might have been suicidal to set up in the Island in 1942. Thus the facts led, inevitably, to a conviction by the Royal Court, and to a sentence such as would ordinarily have been passed : to treat the case as common housebreaking and larceny of goods was probably the most merciful course open to the Court, since if the offence had been given a military or "resistance" flavour a German Court Martial could—quite legitimately—have imposed a heavier punishment. The sentences of imprisonment imposed on the eight men by the Royal Court were in fact not served, because they had been removed from the Island by the Germans but, after the liberation of the Islands and their own return from the Continent, the men naturally desired to have the record of conviction expunged. The Royal Court held that it had no power to do so : indeed, it is difficult to see how any Court of criminal jurisdiction could, years after the event, reverse its own decision in this way. Hence the appeal to the Privy Council.

The Royal Court in each of the Islands of Jersey and Guernsey is of standing equivalent to the Supreme Court in this country, with unlimited criminal as well as civil jurisdiction. The Royal Court of Guernsey exercises that jurisdiction over the whole Bailiwick, there being appellate jurisdiction thereto from the local courts of Alderney and of Sark. From the Royal Court there is an appeal to the Privy Council in certain civil matters, but no appeal as of right in criminal matters, so that the present application illustrates the inherent power of His Majesty (where not encroached upon by statute) to entertain an appeal from any of his Courts, and to be advised thereon by his Privy Council.

# THE SUFFIX J.P.

There is a school of thought among justices of the peace, which holds it undignified to encourage the use of the conventional suffix J.P. Since this denotes an office, not (like the abbreviations Bt. and Kt., or the letters K.C.B., C.B., and so forth) the holding of a title or an honour, there is no authoritative rule. We believe that the Lord Chancellor's Office and the Home Office, the departments most concerned, use the suffix upon letters sent to a justice of the peace on the subject of his duties, but not when writing to him otherwise : for example, if a magistrate wrote to the Home Office asking for information which might equally have been sought by and given to any other person, the answer would not bear the suffix on the envelope, even though the inquirer had stated that he was (or he was known in the Home Office to be) a magistrate. This is a rather artificial distinction which must (if we are rightly informed about the practice) produce some embarrassing doubts in border-line cases. In ordinary life, we should say that persons writing to magistrates generally put J.P. upon the envelope, upon the ground that this is a long established custom. Though sometimes a justice may prefer not to be so addressed (when those who know his preference will naturally respect it), the style is at worst harmless, and has the merit of being accurate. It is not like "esquire," which as commonly used is wrong, so much so that by now it has virtually ceased to have a meaning, or the style "doctor" which, with the prefix "Dr.," has also become almost meaningless through habitual misuse, notably in publications of the Ministry of Health.

The use of J.P. or, in more formal days, the full phrase "justice of the peace" as a suffix to the name is of notable antiquity. It may be suggested that Shakespeare was parodying its excessive use, and the needless use of the word "esquire," when he made Shallow describe himself as "Robert Shallow, Esquire," and Slender add "of the county of Gloucester, Justice of the Peace." But there was the highest authority in the same generation for using the full style on correspondence, as when a letter was sent from the Privy Council Office to "Mr. Keynes, Justice of the Peace of the County of Somerset," not upon any matter relating to his duties, but authorizing him to pay for food for his sons who were in prison on a political charge. Popular usage has remained what, it seems, governmental usage once was, and we think with reason, since the office springs from appointment on the Crown's behalf, like that of a deputy lieutenant or a naval officer, who would ordinarily be given the courtesy suffix D.L. or R.N. A man (or woman nowadays) who is singled out by the head of the Judiciary as a person fit to perform judicial functions, and commissioned accordingly, has a right to feel pride in being so appointed. Doubtless the office, like every other office and every honour in the disposal of the Crown, may be desired and even striven for by unworthy people for unworthy motives, but that is no reason why a person who has achieved a certain position should not be given benefit of it, to the extent of having a customary suffix appended to his name. The office is a legitimate object of ambition, and a person who has achieved an honourable and highly selective status after scrutiny by the Lord Chancellor may, equally legitimately, encourage use of the accepted designation. What we have said so far might seem to lead to a conclusion we do not intend. We have lately come across a suggestion that, while the suffix should be used for justices who hold office by personal appointment, it should not be used for *ex officio* justices. We have even seen it suggested with perverse ingenuity by a provincial editor that an envelope sent to a mayor or chairman of a council who is not in the commission should be addressed "J.P. (temporary)."

We should regard this last as mere bad manners ; on the major point, while we should not add the letters J.P. if writing to the Mayor of Barchester or the Chairman of the Rural District Council of Hogglestock by those designations, we certainly should do so if writing to them by their personal names, without pausing to inquire whether they were commissioned in those names. There is a good deal to be said (for saying which this is not the place) in favour of abolishing *ex officio* justices, but so long as Parliament says that the mayor and chairman are to hold the office of justice by virtue of their local government office, we can see no justification for making, in social intercourse, a distinction which is not made upon the bench.

# SPECIAL OCCASION FOR THE CONVEYANCE OF A PRIVATE PARTY

*By* ERNEST WURZAL

It has been said that the decision in *Victoria Motors (Scarborough) Limited and Another* v. *Wurzal* [1951] 1 All E.R. 1016, has led to much confusion amongst operators of public service vehicles, and, even more surprisingly, amongst solicitors and others who have to advise upon or deal with the law concerned in that case, namely, s. 61 of the Road Traffic Act, 1930 (as amended by s. 24 of the Road Traffic Act, 1934) and s. 25 of the Road Traffic Act, 1934.

Section 61 (1) of the Road Traffic Act, 1930 (as amended) divides public service vehicles into three classes, *viz* : Stage carriages, express carriages and contract carriages. They are defined as :

" (*a*) *Stage Carriages*—motor vehicles carrying passengers for hire or reward at separate fares and not being express carriages as hereinafter defined.

(*b*) *Express Carriages*—motor vehicles carrying passengers for hire or reward at separate fares none of which is less than one shilling or such greater sum as may be prescribed.

(*c*) *Contract Carriages*—motor vehicles carrying passengers for hire or reward under a contract express or implied for the use of the vehicle as a whole at or for a fixed or agreed rate or sum."

If a public service vehicle falls into the stage carriage or express carriage class it requires a road service licence under s. 72 (1) of the Act of 1930 but if it is a contract carriage it requires no road service licence.

The process of getting a road service licence may be a lengthy one, and the licence may impose conditions or may be refused. Therefore operators very often wish to avoid applying for a road service licence if they can legally do so. One way of doing so is provided by the proviso to s. 61 (2) of the Act of 1930 which is :

" Provided that a vehicle used on a special occasion for the conveyance of a private party shall not be deemed to be a vehicle carrying passengers for hire or reward at separate fares by reason only that the members of the party have made separate payments which cover their conveyance by that vehicle on that occasion."

Therefore, if the vehicle is being used on a special occasion for the conveyance of a private party no road service licence is required.

The operative words are therefore " special occasion for the conveyance of a private party."

Various decisions between 1930 and 1933 considerably narrowed the interpretation of those words and therefore Parliament sought to clarify them by passing s. 25 (1) of the Road Traffic Act, 1934, which commences as follows :

" For the purpose of the proviso to subs. (2) of s. 61 of the principal Act a vehicle shall be deemed to be used on a special occasion for the conveyance of a private party where it is used on a journey in relation to which the following conditions are satisfied and not otherwise : "

Then follow seven conditions.

Unfortunately that attempted clarification led coach operators into the assumption that if they complied with the seven conditions then whatever the purpose or occasion of the journey automatically it became a " special occasion " within the proviso in s. 51 (2) of the Act of 1930. In other words they acted in the belief that s. 25 (1) of the Act of 1934 was a definition of " special occasion."

*Victoria Motors (Scarborough) Ltd., and Another* v. *Wurzal* has disposed of that erroneous belief and has interpreted the law quite clearly.

For Victoria Motors (Scarborough) Ltd., who operated coaches to carry passengers from a holiday camp to the railway station each Saturday morning, it was contended that s. 25 (1) of the Act of 1934 is definitive only and that the protection given by the Acts to a special occasion could not be taken away because the special occasion happened on a great number of occasions. In other words it was contended that if the seven conditions were satisfied the occasion became a special occasion.

The Court did not agree.

It held that the proviso to s. 61 (2) of the Act of 1930 and s. 25 (1) of the Act of 1934 must be read together and that for a vehicle to be used without a road service licence, not only must the occasion be a special occasion within the meaning of the proviso but the conditions laid down in s. 25 (1) must also be satisfied.

It is now clear that :

(*a*) If a private party wishes to use a motor coach for a " special occasion " the vehicle cannot be used without a road service licence unless the conditions set out in s. 25 (1) of the Act of 1934 are satisfied.

(*b*) On the other hand, even if the conditions of s. 25 (1) are satisfied, the occasion must be a " special occasion."

One difficulty remains and must remain.

What is a " special occasion " ?

This is largely a question of fact. In *Miller* v. *Pill* (1933) 97 J.P. 197, Mr. Justice Humphreys said : " It may be very difficult to decide in particular cases whether a vehicle is used on a ' special occasion ' . . . The expression ' special occasion ' refers to something more than the views and intentions of the members of the party and points to that which can be described as a special occasion in the locality which was the object of the journey being undertaken . . . a ' special occasion ' within the meaning of subs. (2) must be a special occasion occurring at the place which is the object of the excursion . . . and it is not enough that it should be a special occasion from the point of view of the persons forming the private party."

One must confess some difficulty in understanding this. Surely the annual office trip is a " special occasion " even though one only has a meal or a drink at the other end before returning ?

In *Nelson* v. *Blackford* [1936] 2 All E.R. 109, it was held that Blackpool illuminations were not a " special occasion " and Lord Hewart said : " the occasion must be a particular and individual occasion analogous to a race meeting or public gathering. An attractive feature of a seaside resort which goes on for forty-nine days cannot in my opinion possibly be held to come within those words."

In *Victoria Motors (Scarborough) Ltd., and Another* v. *Wurzal* the Lord Chief Justice contrasted occasions of a " general " or " ordinary " description with occasion which were " special."

A race meeting, a public gathering, an exhibition, a day's excursion, a Sunday School party, a mothers' union party, and a dance are all " special occasions." Blackpool illuminations, a private omnibus run by a club or hotel, the taking of visitors

from a holiday camp or hotel to the railway station are not "special occasions."

Having satisfied oneself that the journey is a "special occasion" it would seem there should then be little difficulty in satisfying the seven conditions of s. 25 (1) of the Road Traffic Act, 1934. But alas! having read so far it will be no surprise to the reader to learn that many pitfalls await the unwary when it comes to satisfying those conditions.

One of them arises from condition (*e*):

"In the case of a journey to a particular destination the passengers must not include any person who frequently, or as a matter of routine, travels, at or about the time of day at which the journey is made, to that destination from a place from or through which the journey is made."

Thus a journey which in itself is a "special occasion" may still be a breach of condition (*e*) if the party includes one who has frequently travelled to the same destination.

For example, if a public service vehicle takes a party to a weekly dance that journey in itself may be a "special occasion" but if the passengers include anyone who travels regularly to the weekly dances then the particular journey may be a breach of condition (*e*).

There I must stop for the time being. If, instead of unravelling the mysteries of the subject I have made confusion worse, I can only call in aid the words of Mr. Justice Devlin in *Reynolds* v. *G. H. Austin & Sons Ltd.* [1951] 1 All E.R. 606 at p. 613 on the subject of a public service vehicle:

"It is a creature of statute and a creature, which, in its habits of appearing and disappearing (and, I suspect, of leaving a grin behind at the legal complications which its behaviour may cause) has many of the attributes of the Cheshire Cat."

# THE YORKSHIRE ELECTRICITY CASE

At p. 275, *ante*, we mentioned incidentally the strange matter of the Yorkshire Electricity Board, and the money spent upon its offices. We were dealing there with excess expenditure upon work for which a civil building licence was required, our remarks arising mainly from the case of Mr. Shinwell's son. In speaking of the Yorkshire Electricity case we could, at that stage, say no more than that a junior Minister, who had to answer a question upon it in the House of Commons, seemed to us to treat it too light-heartedly. His attitude appeared to be that, since the person responsible for what had gone wrong had by then retired, nothing further need be done. This apparent nonchalance may have been misleading; it may have been that, even then, responsible members and advisers of the Government had determined upon full investigation. Investigation was clearly unavoidable, once the matter was brought to public notice; the investigation culminated in a protracted hearing before the Lord Chief Justice at the Leeds Assizes of charges against the chairman and deputy chairman of the Board, after the Board in its corporate capacity had pleaded guilty to charges involving an excess expenditure of more than £40,000, which meant that the sum of £32,000, authorized by the responsible departments of Government to be spent upon the offices, was more than doubled. In speaking of the complaints made in Parliament last year we deprecated suggestions that a body of this sort ought to be parsimonious in providing working accommodation for its staff. Discomfort produces inefficiency, and dignity and decency befit the offices of every public body. But what was done at the offices in this case went beyond all reason. Upon the charges against them as individuals the chairman and deputy chairman pleaded not guilty. The chairman's evidence on his own behalf takes up a great part of a column in successive issues of *The Times*; finally he was found guilty, after the jury had been particularly instructed by the Lord Chief Justice that the case had to be fully made out to their satisfaction. Thereupon he was sentenced to six months' imprisonment. This will be widely regarded as a salutary example; not the least satisfactory feature is that the Lord Chief Justice himself should have been the judge who tried the case. When the Railway Executive were convicted at Brighton of cruelty to animals, and fined, a learned correspondent questioned in our columns the utility of such proceedings against a corporate body, and suggested that imprisoning its common seal would have been about as useful. There was wisdom as well as wit in this, but, since these corporate bodies have no body to imprison, what else is the law to do? The Brighton fine has added, fortunately no more than an imperceptible fraction, to the cost of travel. The fine of £20,000 imposed upon the Yorkshire Electricity Board will fall, unavoidably, upon innocent persons. We have pointed out in a different context a new type of statute, enabling the directors of a company to be fined or imprisoned for an offence committed by the company through its servants, for which the directors themselves were not directly and immediately blameworthy. Such a power of punishment was available, albeit in a different way, in the Yorkshire case; it is the only way of making sure that the directors will exercise due diligence. So also, in regard to fines upon corporate bodies: the magnitude of the fine is a measure of the culpability attached by the court to somebody, so that it is possible to hope that this mark of the seriousness with which the court regards the offence will lead to proper steps, against whoever may have been the individual responsible in a particular case for the misdoing which has to be attributed to the corporate body. Granted that there must in any such case be an element of hit and miss, nevertheless, when the culpable individual cannot be precisely identified and put on trial, punishment of the corporate body as such is fully justified. The case of the Yorkshire Electricity Board is distinguished from that of the Brighton animals (where the culpability was plainly with subordinate servants of the railway), by the fact that the prosecution were able to show that the chairman and deputy chairman had been actively concerned, or at any rate had had the opportunity of interfering to see that the law was carried out. The Lord Chief Justice evidently regarded the chairman's personal share as being greater than the chairman had been willing to admit; the sentence of imprisonment marked his lordship's dissatisfaction with the chairman's actual and personal behaviour, as well as with his lack of candour as a witness.

We fear it is inevitable that political capital will be made out of the incident. For our part we have no intention of joining in a political attack, but it is legitimate to point out that a public corporation managing a socialized industry is not in this type of case in the same position as a commercial company. If a company is found guilty of a breach of law, and punished with a fine heavy enough to hit it in its pocket (the only organ it possesses capable of being hit) the shareholders can, and probably will, make trouble for directors who by their conduct had produced this result, or by failure to supervise the company's servants had allowed the result to come about. In the case of a socialized industry there is no corresponding machinery of shareholders' meetings able to bring pressure to bear upon directors who do not give satisfaction to the shareholders.

It will be seen that in the foregoing sentence, and a little earlier, we have spoken of "socialized" industry, not merely of those which have been nationalized—for up to a point the management of municipal commercial undertakings suffers from a similar disability. If a local authority is fined for some breach of law, or has to pay damages for injury done to a private person, the only parallel to a shareholders' meeting, the only body in a position to assess the personal responsibility of members of the committee managing the undertaking, is the whole electorate at an election held at a future date. This is an ineffective check, but in case of a nationalized undertaking with an independent board the only people in a position, financially, to complain of the fine of £20,000 will be electricity consumers in the Yorkshire area, and they have no means of bringing direct and personal pressure to bear upon the directors of the undertaking. It is the more incumbent upon the Government, whatever its political complexion, to be strict to see that bodies of this sort obey the law, and that no colour is given to the notion (already widely prevalent) that such boards have been placed by Parliament above the ordinary law.

# THE PRESS IN LOCAL DEMOCRACY

*By* A WEEKLY NEWSPAPER JOURNALIST

Those who nowadays make decentralization of authority a main issue in general election campaigns are, consciously or not, underlining the importance and peculiar role of the press in the twin machinery of British local justice and local government. It is an issue which vitally concerns the press of the small towns, since modern newspapers outside Fleet Street depend for their stability upon an informed public opinion in their own neighbourhoods and a healthy local interest in public affairs. Even Fleet Street itself is concerned as much with the debates and actions of council offices and county halls, when anything occurs that is professionally regarded as "news," as it is with the policies threshed out at Westminster.

If, in Burke's phrase, the metropolitan press can still be described as the Fourth Estate, to be ranked with the estate of both Houses of Parliament, then the local weekly press of the county and the country town can as aptly be described as the satellite orb of local government in the wider sense of the word "government," its special task being to record the manner in which the laws passed at Westminster are being carried out in small and large places throughout the kingdom. For this reason, magistrates and their clerks, and councillors and their officials, should be interested in the history, present problems, and possible future of their own newspapers.

Almost every town in Great Britain, with a population of 10,000 or even fewer, has its own newspaper, controlled either independently or as one of an area group. In all, there are thirteen hundred local newspapers each week faithfully putting on record the "parish pump" news, the urban and rural council debates, the verdicts of the petty sessional magistrates, the findings of the coroner, the evidence at official inquiries, the general working out of civic rule in its many departments and the innumerable other "stories" which go to make up the texture of local life.

It is important to bear in mind that this newspaper force is the creation of local government. A century and a half ago, newspapers, even outside the big centres, were national rather than local, depending for their contents upon letters of intelligence sent by mail-coach from London. Until the spread of the railway network, the London press was unable to invade their territory, and so the country educated classes had to glean national and international news from the local newspapers, which for that reason acquired the same kind of importance as is now attributed to the Fleet Street "dailies." Apart from crime reports taken from the Assize Courts, there was hardly any local news, because there was no local government as we know it now.

It was only when local government began to blossom in the middle of the nineteenth century, taking up one enterprise after another, and instituting one reform after another, that the newspapers gradually transformed themselves into local news sheets, giving less and less space to national affairs, and more and more to community matters. The lifting of the "Taxes on Knowledge" and the passing of the Education Act, 1870, helped them towards their heyday, which came at the end of last century. Today, the memory of those old national-local newspapers, as we might call them, lingers only in the laboured leading article, which deals—usually with a somewhat indistinct solemnity—with the national problems of the week. Even this relic of the past is disappearing, and instead the leading article tends to deal, more appropriately, with the conduct of civic affairs. The tone is cautious, not trenchant as it used to be when the writer dealt with national politics, and criticism often becomes too weak and ambiguous, in order to avoid treading on local corns. But this is a defect which may be outgrown in time.

As the character of the country weekly changed, its prosperity grew, and so did its staff. No longer was it a one-man business, with the master-printer acting as publisher and editor, filling up his columns with haphazard items supplied by "Grub Street scribblers who write to eat." The country paper acquired a full-blown editor and a staff of reporters—earnest young men, who, on foot or by pedal-cycle, pursued news diligently over the countryside in the towns and the villages.

Today the country reporter has a car instead of a "push-bike" and by his painstaking and truthful weekly record of everything that goes on, in and out and round about, has become (or can become) a local institution. He should know all the people who make news—the police and magistrates, the local government officials, the urban and rural district councillors, the secretaries and chairmen of the multitude of cultural, social, and political societies, and the ordinary citizens whose individual histories go to make up the patchwork of civic history. Ideally, he can be the friend of all, reaching that dignified position not only by telling the truth, but by telling it tactfully. If the bore of the local council was called uncomplimentary names by the chairman at the last meeting, then the reporter would diplomatically state that "Mr. . . . was called to order." If a councillor becomes entangled, in debate, in his own tortuous phraseology, then the reporter can unravel it for him and couch it in simple, understandable, English.

As yet there is no official comprehensive training scheme operating for journalists (although such a scheme is soon to begin), and the young reporter learns about his job, and a great deal about human nature, in the rough and ready school of hard experience. He picks up his diplomacy and his legal knowledge as he goes along, and it is remarkable that, on the whole, he makes so few mistakes, either in matters of accuracy, in good taste, or in the law of the land. His English, however, is often poor, and the training scheme suggested by the Royal Commission on the Press would have to deal seriously with this defect.

It is one of the illogicalities of English politics that such delicate instruments as civic government and local justice should have to depend, for the reporting of their week-by-week administration, on youths and girls who not only can have no specialized knowledge of government and law, but (in the immediate past at any rate) have not even had the benefit of a secondary school education to help them. It says much for the common sense and native intelligence of young journalists that they have been able to struggle through as well as they have.

From a quarter-century's experience, I may say that weekly newspaper editors and chief reporters tend to place too great a responsibility on their fledglings. Youths almost fresh from school are sent to report judgments and speeches on the most complicated and important matters, and, of course, the results are occasionally absurd. Basil Henriques in his *Indiscretions of a Magistrate*, remarks that many of the local reporters who came to report the juvenile court over which he presided were no older than the juvenile delinquents.

To an ambitious youth, the local newspaper office is merely the first stepping stone to Fleet Street. From there he goes to a more important county paper, then to a small evening newspaper in a nearby town, and, after a couple of years there, transfers to a big provincial city to work on one of the better-known morning or evening papers. Finally, if he has the personality, he will "make" Fleet Street, where his standards of journalism, though they may appear to take strange shapes, are nevertheless soundly rooted in the standards of civics and local justice of the place of his apprenticeship.

On the other hand, many reporters prefer to settle comfortably in the town where they first learned the profession, and they lead contented—sometimes even prosperous—lives, respected as a power in the land, and on the friendliest terms with the local inspector of police and the chairmen of the local political parties.

Because of the tremendously important role of the weekly press in Britain, it is certain that all who play an official or unofficial part in local affairs must feel deep concern that local newspapers are now struggling for their very lives. In part because of the shortgage of paper, but more because of the sharp increase in the cost of both paper and production, the local press is going through a critical period. Already, in the past few months, a dozen newspapers have disappeared, while a number of others have had to merge with competitors. Moreover, the tendency for investment trusts and commercial groupings to take over independent newspapers grows apace; even Fleet Street has "broken into" this field. The character of the weekly press is changing rapidly, and the independent owner and editor are becoming extinct. All the more important, therefore, is it that those who have at heart the interests of local government, and local independence of thought and conduct, should see to it that the local press itself should not, by an ironical twist, become a centralized organ, out of tune with decentralized institutions.

# A LICENCE TO BUILD A HOUSE

[CONTRIBUTED]

At the Northumberland Quarter Sessions on September 27 last, fines of £500 were imposed on each of a building owner, his estate agent, his architect, and his builder for exceeding a building licence in work at a farmhouse and a new cottage beside it. The chairman of the bench, His Honour Judge Richardson, is reported as having said: "It is obvious that none of these people would wish deliberately to flout the law . . . We have no doubt that if proper steps had been taken they would have been able to get supplementary licences to complete this house."

In *Howell* v. *Falmouth Boat Construction, Ltd.* [1951] 2 All E.R., at p. 283, Lord Normand said: "It would be a dangerous power to place in the hands of ministers and their subordinate officials to allow them, whenever they had power to license, to grant licence *ex post facto*, and a statutory power to license should not be construed as a power to authorize or ratify what has been done unless the special terms of the statutory provisions clearly warrant the construction." He went on to draw a distinction between Defence Regulation 55 (1) and 56 A (2). Whilst a licence to repair a ship could be issued retrospectively, building work (other than in cases of urgent necessity) was unlawful except in so far as there was in force a licence, "which plainly excludes a licence with retrospective effect." (On this contrast, *see* 115 J.P.N. 500, following 114 J.P.N. 531.)

The purpose of this article is to examine in the light of the Northumberland Sessions case the issue of licences to build, and how some practical difficulties under Regulation 56A may best be met. The first question, as to the time of issue, is often confused with the appropriate time to register the conditions attached to the licence. These conditions, as to selling price and rent, are registrable as local land charges, and, that being so, the question raised is whether the licence can be issued before the licensee has a sufficient interest in the land against which the conditions fall to be registered. Section 8 (1) of the Building Materials and Housing Act, 1945, imposes the duty to register upon the proper officer of the local authority. But, so far as the licensing is concerned, little can be lost if the registration of the conditions be delayed. For enforceability they should be registered before the completion of the house, *i.e.*, before the licence becomes spent: (*cf.*, the article "Permitted Selling Prices as Local Land Charges" at p. 681, *ante*.)

The reasonable assumption is that the licensee is building the house on his own land. Only the remote possibility of his being a cloak for the landowner who wants a house may seem at first sight to give the question of land ownership at the time of the issue of the licence importance. But, as any licensee owning the land could proceed to sell the house immediately it is completed, the point has little in it (in this connexion).

Some local authorities do require evidence of land ownership in another connexion. If the licensee has no land at the time of issue of the licence, the licence may lapse before he gets it and be lost, because it is not used within the licensing period.

If the licence is issued, and the licensee's contract with the builder contains (as many do) a rise and fall clause, rising prices will result in an application for a supplementary licence. No legal difficulty seems to prevent such a case being met by the issue of a supplementary licence, and the difficulty about revised conditions (to be entered in the local land charges register) which was at one time felt seems now to have been cleared away: *see* P.P. 2 at p. 655, *ante*, and Note of the Week at p. 693, *ante*. A supplementary licence might also be used to licence new work at the house, perhaps a garage, though not for a garage built after the completion of the house, which is met by the provisions of s. 43 (5) of the Housing Act, 1949.

Such a supplementary licence should be issued before any work is done at the increased cost. Otherwise it might be held to have been retrospectively issued. In practice such precision

would be administratively impossible, except in the case of clearly defined extras, such as the added garage whilst the house is going up. It is a question of degree. Objection in such circumstances on grounds of retrospectiveness might be held *de minimis* in certain cases.

The first object of the control of building was to prevent the "uneconomic use of building materials at a time of war scarcity," per Scott, L.J., in *Jackson, Stansfield & Sons* v. *Butterworth* [1948] 2 All E.R. 558 (at p. 556); 112 J.P. 377. The Defence Regulation was supplemented by ss. 7 and 8 of the Building Materials and Housing Act, 1945, which provide specifically for conditions being attached to the licence, apparently being deemed expedient then because the supply of houses was short of the demand. The political justification is the same as that which supports the housing subsidy, a complicated matter and controversial. Certainly, the issue after commencement of building of the limited number of licences permitted to be issued for new houses would not seem to prejudice the objects of control, especially so long as the issue is the responsibility of the local authority, with its comparatively close control over its officials. Some administrative convenience might come from a local authority's being able to issue retrospectively in such cases as, *e.g.*, increasing building costs. But a licence could not be issued after completion of the building, because that event is the limit of the period of the licence which then becomes spent (though not so the conditions as to selling price, etc.). For that reason a valid licence, whatever be the other considerations, can only be issued before completion, and s. 43 (5) of the 1949 Act is in keeping with this view.

Occasionally a licensee, having his house built so far, cannot go on with it—possibly rising costs get beyond his means—and he hands the licence back for transference to the new owner. So that a local authority can see that licences are issued to those most in need, they would probably agree to transfer only if they approve the substitute. In such a case, opportunity for retrospective issue would give no advantage.

Para (8) of reg. 56A can be considered. Its proviso reads, "... where the conditions attached to an authorization or licence granted for the purposes of this Regulation would not have been contravened if the cost ... had not exceeded a particular amount, it shall be a defence for a person charged with a contravention of that condition to prove that at the time when the operation in respect of which he is charged was begun, or the work in respect of which he is charged was carried out, he had reasonable grounds for believing that the said cost would not exceed that amount." The tenor is against retrospective issue. It does not seem to authorize a retrospective licence even when a supplementary licence is required to meet rising costs, for as soon as the fact of rising cost is seen, the licensee cannot then have "reasonable grounds for believing the ... cost ... (will) not exceed (the licence figure)."

But the "Notes for the Guidance of Applicants for Building Licences" (fifth edition), issued by the Ministry of Works, contain the following passage:

"It is also necessary to apply for a supplementary licence if, during the course of the work, it becomes apparent that the job cannot be completed within the figure of cost stated on the original licence, even though no work additional to that authorized by the licence is to be carried out. The originally licensed cost must not be exceeded until a further licence has been granted."

Thus the Minister does not require the application for the supplementary licence to be made before any work is carried out at the increased cost, and is prepared for the whole of the original cost to be expended before application, although some of the licensed work remains undone.

"EPHESUS."

# WEEKLY NOTES OF CASES

## KING'S BENCH DIVISION

(Before Lord Goddard, C.J., Slade and Devlin, JJ.)

November 2, 20, 1951

**R. *v.* FULHAM, etc., RENT TRIBUNAL.**
***Ex parte* GORMLY**

*Rent Control—Rent tribunal—Jurisdiction—Rent of premises entered in register after reference—Further reference by new tenant with view to reduction—No change of circumstances alleged—Furnished Houses (Rent Control) Act*, 1946 (9 *and* 10 *Geo.* 6, *c.* 34), *s.* 2 (2).

MOTION for order of *certiorari*.

On July 20, 1949, the applicant, James Michael Gormly, applied to the Fulham, etc., Rent Tribunal to determine the reasonable rent of premises at Ealing, which were then let by him on a monthly tenancy as a furnished flat to one Mrs. Johnson at four guineas a week. On August 25, 1949, the tribunal fixed the rent at £208 per annum, thereby reducing the original rent by 4*s.* per week. Subsequently, Mrs. Johnson quitted the flat, which was afterwards let to one Amos Wilson. On September 26, 1950, on Wilson's application, the tribunal purported to reduce the rent from £4 to £2 per week, but in April, 1951, that decision was quashed on *certiorari*. On May 12, 1951, Wilson again referred his contract to the tribunal as an original reference and not as one for consideration on a change of circumstances. On July 16, 1951, the tribunal made their adjudication. It was set out in the form known as F.R. 10 prepared by the Minister of Health for notifying decisions, and it was in these terms: "Under s. 2 of the Furnished Houses (Rent Control) Act, 1946, I have to notify you that the rent fixed by the tribunal for the premises specified in the schedule below is entered at (6) of the schedule, and the rent is so fixed for the period entered at (7) or, if no such period is entered, for the duration of the Act. It will be lawful, however, for the lessor or the lessee or the local authority to refer the case to the tribunal for re-consideration of the rent so entered on the ground of change of circumstances ..." The schedule stated that the rent was reduced from £208 to £132 per annum, the period in respect of which the rent was so fixed being left blank. In the determination of August 25, 1949, against the period in respect of which the rent was fixed the words "no variation" had been entered, and that determination had been duly registered in the register kept under the Act. The applicant obtained leave to apply for an order of *certiorari* to quash the determination of the tribunal of July 16, 1951, on the grounds (*a*) that the tribunal had no jurisdiction to make the determination, and (*b*) that the tribunal, having by their decision of August 25, 1949, reduced the rent from £4 4*s.* to £4 a week, in consequence whereof the rent of £4 a week was entered in the register, the tribunal had no jurisdiction to reduce the rent of the premises further except on the ground of change of circumstances, which was at no time alleged.

*Held*, that a change of tenancy did not confer jurisdiction on a tribunal to reduce a rent which had been entered in the register, when no change of circumstances was alleged, and *certiorari* must, therefore, issue to quash the determination of the tribunal.

Counsel: *Roger Willis* for the applicant; *J. P. Ashworth* for the tribunal.

Solicitors: *Freeborough & Co.*; *Solicitor, Ministry of Health.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

## THE SIGN MANUAL

With tears he tells the bench that he'll atone,
But they have steeled their hearts—and turned to *Stone*.

J.P.C.

# LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 83

## DUST INHALATION IN A FACTORY

A limited company carrying on business at Coventry as manufacturers of mass-produced prefabricated bodies for motor vehicles, was summoned to appear at Coventry Magistrates' Court on October 23, 1951, to answer a charge that there had been a failure to take all practical measures to protect persons employed by the company against inhalation of dust, whereby one employee suffered bodily injury, contrary to ss. 47 and 133 of the Factories Act, 1947.

For the prosecution, evidence was given that completed car bodies left the factory ready to be affixed to the chassis on the assembly lines of different manufacturers. In the making of the bodies, one process involved the filling-up of joints with a molten metal, not unlike solder, the main constituent of which was lead. The surplus metal was then smoothed off with a rotating wheel called a "discing" machine which is rather like a grindstone. This process sets up a dust which is about seventy-five *per cent.* fine lead particles. The workmen had been provided with masks, but habitually removed these masks when not actually using the "discing" machine. The "discing" machine process was only part of the work done by these men, and for two-thirds of their time they were not using the wheel, but were using other tools, although they remained in the dust laden atmosphere all the time, and even smoked cigarettes while at work in such atmosphere.

It was conceded that the employers wished these men to wear these masks all the time they were at work, and that they were willing to supply the most efficient type of mask. The men, however, found the type in use, not unlike a civilian gas mask issued in the last war, an irritation, especially in hot weather, and took them off whenever they were not actually working on the "discing" machine.

As a result of working in this dust laden atmosphere and removing his mask, one man developed the symptoms of lead poisoning, including the typical blue line at the base of the teeth. He was treated in hospital and recovered, and the facts were then reported to the factory inspector, with the result that the prosecution of the defendant company was initiated.

For the defendant company, which pleaded not guilty, the lead poisoning was attributed primarily to the workman's failure to wear the mask provided, and the company unsuccessfully tried to establish that the poisoning was the result of previous employment with another employer, or at least was contributed to by that employment.

It was stressed that all practical measures had been taken, but it was conceded that the factory inspectorate had for some years been advocating the use of a different mask, and that the work should be done in a sealed compartment from which the dust had been extracted. The defendant company stated that it had, in fact, on order, booths to be placed on the moving track at the points where the "discing" process was done, but there had been considerable delay in obtaining these booths.

It was conceded by the prosecution that the factory had in use an efficient air extraction system, but it was urged that this was not powerful enough for removing the heavy particles of lead dust, and some experts doubted whether any plant would be sufficiently powerful to remove this type of dust.

It was recommended that men engaged on this work should alternate it with other work, as lead poisoning is cumulative, but the body can rid itself of the poison when removed from the aggravating cause.

The justices found the case proved and imposed a fine of £75 and ordered the payment of £5 5s. costs.

### *COMMENT*

It will be recalled that s. 133 of the Act provides that if any person is killed, or dies, or suffers any bodily injury in consequence of the occupier or owner of a factory having contravened any provisions of the Act or any regulations made thereunder, the occupier or owner shall, without prejudice to any other penalty, be liable to a fine not exceeding £100. The section goes on to provide that in certain cases the fine may be applied in whole or in part to the injured man or, in case of his death, to his family, and there is a proviso to the section that in case of injury to health, the occupier or owner shall only be liable to conviction if the injury was caused directly by the contravention.

It is to be remembered that it was decided more than fifty years ago that contributory negligence is no defence under this section, and therefore it would have availed the defendant company nothing in the case reported above to have established that the injury suffered by the workman was due in part to his failure to wear his mask the whole time.

Section 47 of the Act enacts that in every factory in which there is given off any dust or fume likely to be injurious or offensive to the persons employed, or any substantial quantity of dust of any kind, all practicable measures shall be taken to protect the persons employed against inhalation of the dust or fume, and in particular exhaust appliances are to be provided and maintained, whenever practicable as near as possible to the point of origin of the dust or fume so as to prevent it entering the air of any workroom.

It was decided in *Hoare* v. *Ritchie & Son* (1901) 65 J.P. 261, that if the dust or fume exists in such quantity as must necessarily be injurious to health eventually, the offence is committed without evidence of actual injury to health.

(The writer is greatly indebted to Mr. A. N. Murdoch, M.A., Clerk to the Coventry City Justices, for information in regard to this case.) R.L.H.

## PENALTIES

Oxford—October, 1951—obtaining family allowance when her three children were not living with her—one month's imprisonment. Defendant obtained £31 10*s.* to which she was not entitled.

Oldbury—October, 1951—stealing clothing from a National Service Hostel—fined £10. To pay 10*s.* costs. Defendant, aged twenty-eight, asked for five similar offences committed on the same night to be taken into consideration. A police inspector said that people at the hostel were frequently robbing each other.

Walsall—October, 1951—(1) causing actual bodily harm, (2) discharging a firearm in a public place, (3) carrying a firearm without a licence—(1) fined £5, to pay 10*s.* costs, (2) fined £1, (3) fined £1. Defendant, aged seventeen, was showing his new air pistol to his two friends when he accidentally touched the trigger and a pellet entered the eye of one of the onlookers.

Bath—October, 1951—(1) stealing £31 from her employers, (2) omitting with intent to defraud, from a cash book, the receipt of two cheques—two months' imprisonment. Defendant, a woman of twenty-nine, with a previous conviction for false pretences in 1950 when she was fined £20, asked for twenty-three other offences ivolving £124, to be taken into consideration. Defendant had spent most of the money on clothes for herself.

Croydon—October, 1951—mixing vapourizing oil and petrol—fined £8 10*s.* and to pay £10 10*s.* costs. Defendant was seen by customs officers to mix paraffin with petrol. Petrol at present bears a duty of 1*s.* 10½*d.* a gallon. Kerosene, which includes paraffin, bears no duty.

Blandford—October, 1951—(1) failing to stop after running over a dog, (2) failing to report an accident—(1) fined £5, (2) fined £3 and to pay 7*s.* 6*d.* costs. Defendant, an archdeacon, ran over a dog while driving a car. He looked round, slowed down and then drove on. The dog had to be destroyed.

Cardiff—November, 1951—stealing a bicycle—six months' imprisonment. Defendant, aged fifty-five, of no fixed abode, stated he was formerly a ship owner. Police stated he had a large number of previous convictions, and was a methylated spirit addict.

York Assizes—November, 1951—(1) breaking and entering a joiner's shop, (2) indecent assault—four years' imprisonment. Defendant, aged twenty-four, having committed the first offence attacked two girls aged eleven and nine on a river bank and indecently assaulted one of them. A general hue and cry was raised, and defendant plunged into the river, but police were waiting for him on the other side and apprehended him.

Lydney—November, 1951—Driving a car while disqualified—one month's imprisonment.

Cardiff—November, 1951—overloading a ship so that the loadline was submerged—fined £200. To pay £10 10*s.* costs. Defence pleaded that the loading of iron ore took place in very wet weather and there was possibly as much as seven tons of water in the cargo.

## SELF-HELP

Lawyers will help you adjust your affairs
But are usually hopeless at managing theirs.

J.P.C.

## RESOLUTION

Rather than have my relations contest it
I'll not make a will—I'll die darn well intestate.

J.P.C.

# THE WEEK IN PARLIAMENT

**From Our Lobby Correspondent**

### MARRIAGE AND DIVORCE INQUIRY

Lt.-Col. M. Lipton (Lambeth, Brixton) asked the Attorney-General in the Commons what progress had been made by the Royal Commission on the marriage laws.

The Attorney-General replied that the Royal Commission on Marriage and Divorce was appointed in August of this year. During September memoranda were prepared, by the Chairman and others, dealing with the present state of the law and outlining the problem which confronted the Commission. They were considered by the Commission at its first meeting on October 8.

Notices were then inserted in the English and Scottish Press inviting the submission of memoranda not later than December 20, 1951. He understood that the Commission intended to hold a series of meetings early in the New Year, to consider any memoranda which might have been submitted, and to decide on the procedure to be adopted regarding the hearing of oral evidence.

### DETENTION CENTRES

Mr. G. Benson (Chesterfield) asked the Secretary of State for the Home Department what age group or groups the two experimental detention centres proposed to be set up would take.

The Secretary of State for the Home Department, Sir D. Maxwell Fyfe, replied that premises for one detention centre had been acquired, and negotiations were proceeding for a second. If that was acquired, his intention was that one should take boys aged fourteen to sixteen, the other boys aged seventeen to twenty-one.

### LIBEL LAW

The Attorney-General states in a written Parliamentary answer that he is unable at the moment to say when it will be possible to introduce legislation to give effect to the recommendations of the Porter Committee on the laws of libel and defamation.

# PARLIAMENTARY INTELLIGENCE

**Progress of Bills**

### HOUSE OF LORDS

Tuesday, November 27

DENTISTS BILL, read 1a.
BORDER RIVERS (PREVENTION OF POLLUTION) BILL, read 3a.

Wednesday, November 28

SPRING TRAPS BILL, read 2a.

Thursday, November 29

PNEUMOCONIOSIS AND BYSSINOSIS BENEFIT BILL, read 2a.
EXPIRING LAWS CONTINUANCE BILL, read 3a.

### HOUSE OF COMMONS

Monday, November 26

FESTIVAL PLEASURE GARDENS BILL, read 2a.

Tuesday, November 27

DIPLOMATIC IMMUNITIES (COMMONWEALTH COUNTRIES AND REPUBLIC OF IRELAND) BILL, read 1a.

Wednesday, November 28

MERCHANT SHIPPING BILL, read 1a.
PUBLIC WORKS LOANS BILL, read 3a.

Thursday, November 29

ELECTRICITY SUPPLY (METERS) BILL, read 1a.
MINISTERS OF THE CROWN (PARLIAMENTARY UNDER-SECRETARIES) BILL, read 2a.
HOME GUARD BILL, read 3a.

# PERSONALIA

### OBITUARY

His Honour Judge Crosthwaite, O.B.E., died on November 28, at the age of seventy-one. Called to the Bar by the Inner Temple in 1906, he practised at Liverpool and on the Northern Circuit. From 1926 to 1928 he was deputy recorder of Liverpool and in 1928 he became a county court judge.

# CORRESPONDENCE

[The Editor of the *Justice of the Peace and Local Government Review* invites correspondence on any subject dealt with in its columns, for example, magisterial matters, probation, local government, etc.]

*The Editor,*
*Justice of the Peace and*
*Local Government Review.*

DEAR SIR,

### POOR PRISONERS' DEFENCE

Referring to your Note in your issue for October 20, 1951, I have read the press report of the statement made by the Lord Chief Justice in the Court of Criminal Appeal on October 4, 1951. It seems to me that justices will now find themselves in some difficulty on this question of legal aid and defence certificates.

I think everyone will agree that at the conclusion of a case it can often be said that the granting of legal assistance was a waste of public money, but it must be remembered that at the time of deciding whether or not to grant legal assistance of this sort the justices rarely, if ever, are in possession of sufficient information to know if the expenditure is justified. In summary cases, in which the application is usually made before any facts are known by the court, it certainly is not available. In committal cases, although it may be perfectly clear that the prisoner can have no real defence to the charge, it is impossible for justices to know at the time of committal if there are any mitigating circumstances to be pleaded. In cases dealt with under ss. 20 or 29 of the Criminal Justice Act, 1948, I agree the position is somewhat different, inasmuch as the justices have made up their minds either that the prisoner is suitable for borstal training or that they themselves have not sufficient powers of punishment, but it does not follow in either case that the higher court will take the same view or that there are no mitigating circumstances for that court to consider. It may well be that whatever counsel says in mitigation could be equally well said by the prisoner himself, but, again, the justices probably have no knowledge of the prisoner's ability in that way.

The Lord Chief Justice's emphasis on the need for taking great care that public money shall not be wasted in this way will, I am sure, be appreciated by justices, but, in my opinion, it will not be easy to decide, in the interests of justice, where to draw the line between granting and refusing legal assistance. In 1943, Mr. Justice Humphreys made it clear that the Poor Prisoners' Defence Act, 1930, did not limit the granting of legal assistance to cases in which a defence had been disclosed. (107 J.P.N. 325).

Yours faithfully,
A. H. CHANDLER,
Clerk to the Justices.

Castlegate House,
Lewes, Sussex.

[When s. 18 of the Legal Aid and Advice Act, 1949, is brought into force, which, it will be remembered, broadly enacts that doubts about granting certificates are to be resolved in favour of granting the application, there will be this further factor to be considered.—*Ed., J.P. and L.G.R.*]

# NEW COMMISSIONS

### BRISTOL CITY

Frank Manning Arkle, The Manor House, West Town, nr. Bristol.
Arthur Thomas Bowden, 66a, Redland Road, Bristol 6.
Mrs. Nancy Harriet Burton, 55, Canynge Road, Bristol 8.
Frank Oliver Coward, 59, Coombe Lane, Westbury-on-Trym, Bristol.
William Enoch Hunt, Oakridge, Sidcot, Somerset.
John Herbert King, Somerlea, Langford, nr. Bristol.
Fred Morgan, 68, Winterstoke Road, Bristol 3.
Mrs. Nora Mabel Pedlar, 16, Broadway Road, Bristol 7.
Mrs. Berta Sacof, 24, Ormerod Road, Stoke Bishop, Bristol 9.
Cecil Rowland Setter, Crossways, Stoke Hill, Bristol 9.
John Buchanan Steadman, Rutherglen, Stoke Bishop, Bristol.
Alwyn Webber Thomas, 677, Wells Road, Bristol 4.

### PORT TALBOT BOROUGH

John Arthur Griffiths, 31, Abbey Road, Port Talbot.
Mrs. Una Mary Marshall, 1, Grange Street, Port Talbot.
Mrs. Florence May Morris, 2, Ynysygwas, Cwmavon, Port Talbot.
Thomas Ivor Rees, Atlanta House, Courtland Place, Port Talbot.
Richard Thomas, Tynycellar Farm, Margam, Port Talbot.
Joseph Treharne, 18, Pritchard Street, Aberavon, Port Talbot.

# MATRIARCHY AND MARRIAGE

The injunction "Go to the ant, thou sluggard" was intended, in its context, as an exhortation to greater productivity in industry; but the modern tendency in many countries is to extend its application to general reforms in the social system. Maurice Maeterlinck, the author of *The Blue Bird*, has combined the observation of a naturalist with the contemplation of a philosopher in his two monumental works—*The Life of the Ant* and *The Life of the Bee*. The ant, like the bee, lives in a community where the castes of workers and soldiers are restricted to the females of the species; the males are relegated to second place, if not actually massacred when their work of procreation is done. We have not yet reached that stage in our society, though the general trend seems to be in that direction.

The conception of a human society dominated by women is by no means new; early Greek writers told of the Amazons, a warlike race of females who migrated in legendary times from the Caucasus to Asia Minor. According to Herodotus they preserved their race by yearly raids on a neighbouring people whose men they forcibly compelled to submit to their embraces, deserting them immediately afterwards; their male offspring they killed off, and nurtured the females in the cults of government, agriculture and war. The name "Amazon" signifies "breastless," owing to their custom of cutting off the right breast so that they might more easily draw the bow.

Matriarchal communities in historical times have not found it necessary to resort to methods quite so drastic as these. There are still in existence, however, many which assign a dominant *rôle* to the women, both by the practice of polyandry (one woman having several husbands) and by the custom of matriliny (tracing the descent through the female line). Supreme authority in family conflicts is exerted by the kin of the wife, and in some parts of Africa the power of the women is upheld by secret societies of exclusively feminine membership.

A representative lady from one of the matriarchal communities of Central Sumatra, in the East Indies, has recently lectured on the subject in The Hague. She rejoices in the imposing name of Rangkajo Chailan Sjamsoe Datoe Toemenggoeng (which must have looked well on her marriage certificate), and she assured her audience that matriarchy was "a good thing" because it brought with it a fuller development for women. "The husband is the guest and friend of his wife," she is reported as saying; "his laundry is done by his own family, and this preserves the atmosphere of romance." This last remark may, at first blush, seem to western ears a *non sequitur*, but careful consideration may lead to a recognition of its wise profundity. There is, after all, something in the theory that the washing and subsequent display on the clothes-line of male woollen underwear is not conducive to ardent passion. In any case it may be no more than the counter-part of the increasingly prevalent habit of initiating the British husband into the mysteries of cooking, washing-up and bathing the baby. As regards more general matters, "relationships between men and women are courteous and considerate, but if the husband finds the door of his wife's house locked three times in succession, he knows the time has come to pack his bags." Husbands, it seems, have no corresponding privilege in this part of Sumatra.

Members of the Married Women's Association and other feminist organizations in this country will have taken due note of these eminently reasonable institutions, on which they will doubtless give evidence in due time before the Royal Commission on Marriage and Divorce. Reforms directed towards the assimilation of English matrimonial rights and duties with those in force in Sumatra would, after all, be scarcely more drastic than some which are now being advocated such, for example, as the granting to the wife of an equal half-share of her husband's property and income without (as it would seem) relieving him of the present legal liability to maintain her.

In the United States of America progress towards a matriarchal form of society has been far more rapid than in our comparatively conservative community. It is not merely that a husband who is detected in a mild and transitory flirtation with another woman is penalized by being ordered to maintain a young and able-bodied wife in luxury for the rest of her natural existence. Scarcely a week passes without a newspaper article recording the fourth or fifth divorce of some film-actress (whose own personal income may run into six figures) and who has endured, physically and psychologically, terrible sufferings because her husband has neglected to attend her *première*, refused to buy her a sufficiently luxurious automobile or trumped her ace at the bridge-table. The courts of the State of Nevada, in particular, have shown a very proper solicitude for the protection of the wife against such fiendish acts of cruelty, and the money settlement in favour of the successful petitioner, which frequently attains almost astronomical dimensions, is scarcely completed before she is rushing into a fresh "romance" calculated to be as ephemeral (and as remunerative) as the last. With the current trend of adulation and enthusiastic adoption, in this country, of all trans-Atlantic extravagances, from linguistic neologisms to contortionist dancing, it would not be surprising if the practice of polyandry, which obtains (in all but the name) in many parts of the Union, should be transplanted at an early date to these receptive shores.

It has been well said that varying national attitudes to the emotion of Love can be illustrated by the onomatopoeics of the word in different languages. Philologists have pointed to the passionate sound of the Italian *Amore*, the sweetish sentimentality of the German *Liebe*, and the sensuality of the French *Amour*, compared with the inhibited respectability of the English monosyllable. It might be equally interesting to apply the methods of Carl Jung, as expounded in his *Studies in Word Association*, to testing the reactions of representative women from Britain, Italy, Germany, France and the United States to the word Marriage. It may be reasonably forecast that the association called up by the word in the mind of the Englishwoman would be Home; for the Italian, Church; for the German, Children; for the Frenchwoman, Bed. For the American girl the associative word would undoubtedly be—Alimony.

A.L.P.

### DISGRUNTLED REFLECTION

Do the Justices know
I'm within a *Stone's* throw?

J.P.C.

### LINES ON THE APPROACH OF FEBRUARY

Debts accrued and still accruing,
Brewster Sessions—trouble brewing.

J.P.C.

# PRACTICAL POINTS

**All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.**

**1.—Adoption**—*Service of notice—Mother of Infant—Whereabouts unknown.*

A query has arisen as to whether r. 9 requires the service of a notice of hearing on the mother of an infant who has already signed a consent.

In the case under review the mother has disappeared and her address is not known, and it is suggested that the rule does not require the service of a notice upon her, but only the "issue" of a notice at her last known address.

Presumably, even if there were no signed consent, s. 3 (*c*) of the Act would permit the court to dispense with any consent, but I shall be glad to know whether in your view actual "service" of the notice is an essential to the making of an order. STL.

*Answer.*

Rule 9 requires a notice to be issued addressed to the mother as a person whose consent is required, and r. 31 prescribes the manner of service. We think a notice should be sent to her last known place of abode, whether in England or elsewhere, by registered post. If it does not actually reach her, an attempt has been made to serve her with notice, and the court can dispense with her consent, on the ground that she cannot be found.

**2.—Children Act, 1948**—*Affiliation Order—Venue for proceedings under s.* 26.

A woman patient in a hospital for mental defectives has recently been out on licence and residing at her home in the area of a county borough. During this period she conceived and, after giving birth to a child, has returned to the hospital which is situate in the area of the adjoining county council.

The child was taken into care by the county borough authority.

At the last assizes a man who resides in the area of the county borough was found guilty of interfering with the woman. The council of the county borough desire to obtain an affiliation order against this man under s. 26 of the Children Act, and it would appear that there would be no great difficulty in adducing evidence to prove that he is the putative father.

From my reading of the provisions of s. 26 it might appear that such an order could only be made upon the application of the county authority in whose area the hospital is situate. The relevant provisions of the section read:

"In England and Wales where—(*a*) an illegitmate child is in the care of a local authority under s. 1 of this Act . . . and no affiliation order has been made in respect of the child the local authority whose area includes the place where the mother of the child resides may make application to a court of summary jurisdiction having jurisdiction in that place for a summons to be served under s. 3 of the Bastardy Laws (Amendment) Act, 1872."

The woman is ordinarily resident within the meaning of s. 1 of the Children Act and the National Assistance Act, 1948, in the area of the county borough, but it will be observed that the word "resides" and not "ordinarily resident" is used in s. 26 and also that there is no clause similar to s. 1 (5) of the Children Act to say that institutions such as hospital for mental defectives should be disregarded in determining residence.

Would you be good enough to give your opinion as to whether the county borough authority can make application for a affiliation order to the local magistrates' court or whether it will be necessary for that authority to ask the county authority to take proceedings at the court of summary jurisdiction having jurisdiction in the place where the hospital is situate. SAR.

*Answer.*

As we understand the position, this woman may be in the institution for a indefinite period, although she may have some sort of a home elsewhere to which she may or may not some day return. In the ordinary sense, therefore, the institution appears to be her present residence, in which case it will be for the county council to take out the summons. Cases under the Bastardy Laws (Amendment) Act, 1872, seem to indicate that where the woman takes out the summons the question is where she is *bona fide* residing at the time of the application, and we think the test in the present case is where the woman is now living.

**3.—Collecting Officers**—*Change of office holder—A collecting officer unable to observe his duties owing to illness.*

It has been stated that on the death or retirement of a collecting officer all the orders for payments through him must be varied.

Where, however, an order directs payment to be made to "the collecting officer" this would not seem necessary having regard to s. 32 of the Interpretation Act, 1889.

We can find no statement of terms of appointments of collecting officers required to be made by magistrates under s. 1 (1) of the Affiliation Orders Act, 1914. Persumably a collecting officer holds office at the will of the magistrates and could resign by his attorney so that the acting clerk to the justice can be immediately appointed and enabled to enforce payment of arrears, etc. Do you agree? SAIL.

*Answer.*

The convenient practice is to make the payments under the order payable to "the collecting officer" without naming him, and in that case there appears to be no need to vary an order when there is a change of collecting officer.

We agree that the collecting officer's appointment, being made by the justices, can be terminated by them and that they can accept his resignation as suggested and appoint the acting clerk to the justices in his stead. He can then take steps to enforce orders.

**4.—Criminal Law**—*Outstanding charges—Taking into consideration—Offences committed in Scotland.*

I should be much obliged if you could help me out of a difficulty which has arisen in the following circumstances.

A man is to appear shortly before my bench charged with a number of offences of larceny from telephone boxes in hotels. He has also admitted a number of offences in Scotland. Can these be taken into consideration when he is dealt with by a court in England? It is appreciated that he cannot be charged with an offence committed in Scotland.

I should be grateful for your opinion and perhaps you could let me know any authorities on this point. SCO.

*Answer.*

A court should not take into consideration offences which it would have no jurisdiction to try *R.* v. *Warn* [1937] 4 All E.R. 327. This was a case in which some offences admitted took place in Ireland, and the court said " . . . no English court should purport to take into consideration cases triable only in some other country."

**5.—Guardianship of Infants**—*Infant an orphan—Consent to marriage.*

There is an infant residing in my division, a serving airman, age nineteen, whose parents are both deceased and as to whom there is no legal guardian. He wishes to be married. It seems that by virtue of sch. 2 of the Marriage Act, 1949, and the Guardianship of Infants Act, 1925, the proper procedure may be for an application to be made to the court of summary jurisdiction to appoint a guardian who may then give consent to the marriage.

If this is the proper procedure it would seem that the court should exercise its jurisdiction by an order upon complaint, presumably to be made by the infant himself.

A possible alternative is that the Registrar General may have power to dispense with the necessity of obtaining any consent by virtue of the Marriage Act, 1949, s. 3 (1).

Your views would be appreciated and any guidance to the correct forms. S.G.

*Answer.*

The second schedule to the Marriage Act, 1949 states what consents are required to the marriage of an infant, and in the case of an infant whose parents are both dead the consent is that of the guardian appointed by the parents or by the court. Here there is no guardian, therefore it appears that no consent is required. However, if some person is willing to accept the responsibility of appointment as guardian, and applies under s. 4 (2) (*a*) of the Guardianship of Infants Act, 1925, such person could give consent, in which case no application would be necessary. If he refused consent, application could be made by way of complaint to a court of summary jurisdiction in accordance with the Guardianship of Infants (Summary Jurisdiction) Rules, 1925, for form *see Oke's Magisterial Formulist*, second (cumulative) supplement. However, unless either the infant feels the need of a guardian or some close relative or friend desires to be appointed, we do not think this necessary and we think that a marriage by banns or certificate may proceed.

**6.—Highways**—*Liability for repair of public paths—National Parks and Access to the Countryside Act*, 1949, *s.* 47.

The question has arisen of the liability of the county council for the maintenance and repair of certain alleyways in a built up area of a

rural district. These are passageways between houses, leading from one main street to another, over which the public have acquired a right of way. They are approximately three feet in width, are constructed in part of steps, and so can be used only by pedestrians. These alleyways have not been kept in repair by the owner of the soil and the county council have hitherto declined to accept responsibility for their repair. They differ from what is generally understood by a footpath, in that they are in the middle of a built up area and not in open country, but the view has been expressed that under s. 47 of the National Parks and Access to the Countryside Act, 1949, they are now highways repairable by the inhabitants at large. Do you agree with this view? ARR.

*Answer.*

Yes: *see* our Note of the Week at 114 J.P.N. 244. These are clearly "public paths" as defined in s. 27. Why they were not regarded as highways repairable by the inhabitants at large before the new Act does not appear: we should have thought they were, but there may have been some reason which is not before us. Anyhow, we see nothing to exclude s. 47, which is not restricted to "open country."

7.—**Highway**—*Repair—Closing where no statutory power—Public notices.*

The council proposes in the near future to reconstruct by agreement with the British Transport Commission a bridge carrying a classified main road over a railway. The bridge is the property of the Commission and it is also the Commission's responsibilty at present to repair and maintain the bridge, the roadway thereover and the approaches thereto.

At a certain stage in the reconstruction it will be necessary to close completely the bridge and approaches and to divert all traffic. The question of the appropriate method of closing the highway has arisen since it would appear that it is not open to the council to make an order under s. 47 of the Road Traffic Act, 1930, because the approaches and the highway over the bridge are not repairable by any local authority. Consequently neither the borough council nor the county council is a "highway authority" in relation to the bridge and its approaches. There does not appear to be any provision which would assist in the Railway Clauses Consolidation Act, 1845, and as far as is known the British Transport Commission have no other statutory provisions relating to the point in previous railway legislation to which it became subject as a result of the Transport Act, 1947.

The opinions expressed in P.P. 16 at 76 J.P.N. 587 and 44 J.P.N. 222 have been noted. Your advice would be appreciated on whether in present day circumstances:

1. Any order can properly be made by the council under the Road Traffic Act, 1930.
2. Whether the road can be closed under any other relevant statutory provision.
3. If not, whether the council has an inherent right to close the road, relying on *R.* v. *Justices of Dorset* (1812) 15 East 594, and *R.* v. *Richmond Justices* (1860) 24 J.P. 422.
4. If no formal order is required, what advertisements of the closure are suggested as being appropriate. ABC.

*Answer.*

Seeing that the inhabitants are indictable at common law for not repairing a highway repairable by them, we consider that, as indicated in the old answers to P.P.'s cited *supra*, the common law gives them a correlative right to close the highway so far as is necessary for the purpose of repair. This is implicit in the judicial decisions, also cited *supra*. To close part of the width is often as much as is necessary, and therefore all that the common law justifies, but there are cases, of which a highway carried by a bridge which needs rebuilding will ordinarily be a good example, where practical necessity calls for complete closing. And where an obligation to repair rests upon persons other than the inhabitants, either *ratione tenurae* or by statute, the common law applies, in our opinion, equally. Section 47 of the Road Traffic Act, 1930, where applicable, supplements the common law, *e.g.*, by express power to differentiate between classes of traffic, by providing regular machinery, and (most important) by imposing penalties which do not attach at common law. We therefore answer your specific questions:

1. No.
2. No, subject to examination of the railway statutes.
3. Yes.
4. We should use those required by s. 47 of the Act of 1930, and, in view of your proximity to London and in order to reduce the public inconvenience and the likelihood of complaints, give notice also in London newspapers. It would also be courteous, and therefore prudent, to inform the recognized motoring bodies and invite them to inform their members.

8.—**Husband and Wife**—*Registration of maintenance order made in Northern Ireland Defendant found not resident in England—Cancellation of Registration.*

Section 17 (3) (b) requires that an order sent for registration to a court of summary jurisdiction in England shall be sent to a court acting for the place in which the defendant appears to be. Recently I received documents under the provisions of the Act and rules. In accordance with the rule the necessary entry was made in the court register and notice sent to the clerk of the transmitting court in Northern Ireland.

Notice was also sent by registered post to the person liable to make the payments as required by r. 13 (1). This notice was returned through the post office and the envelope marked "Gone Away." A number of inquires have been made and it is now ascertained that the man concerned is living outside the jurisdiction of this court, and that he was so living outside the jurisdiction when the order was sent to me.

In such circumstances what is the position with regard to the registration of the order in this court? Has the court any jurisdiction and if not what is the procedure which should be followed? So far as I can see the Act and rules make no provision for this. Can the papers be returned to the original court and the entry in the register cancelled or must cancellation only be made by the means provided by the Act and rules? S. CHAG.

*Answer.*

As the Maintenance Orders Act, 1950, s. 24 and the Maintenance Orders Act, 1950 (Summary Jurisdiction) Rules, 1950, lay down a procedure for cancellation of registration, it appears necessary to follow that procedure and not to act informally, so that application will have to be made by or on behalf of the wife before the registration can be cancelled. In communicating with the clerk of the court in Northen Ireland, the clerk of the English court will no doubt furnish any information in his possession as to the present whereabouts of the husband.

9.—**Juvenile Courts**—*Provision of premises for holding.*

Section 47 of the Children and Young Persons Act, 1933, deals with procedure in juvenile courts. Subsection (2) of that section provides for juvenile courts to sit either in a different building or room from that in which sittings of courts other than juvenile courts are held, or on different days from those on which sittings of such other courts are held.

In the past in this division juvenile courts have been held in the magistrates' private room and representations have been made from time to time to the county council to extend such a room or provide other accommodation. I should say that the magistrates' room is in the same building as that in which the adult court sits. I was under the impression that the Children and Young Persons Act, 1933, laid it down that in the case of a petty sessional division the county council authority were responsible for providing suitable premises for holding juvenile courts and in the case of boroughs the town council but I cannot find the authority in such Act. It might be, however, that one has to go back to the Indictable offences Act, 1848, and the Summary Jurisdiction Act, 1879, which deal with the holding of courts of summary jurisdiction although in those days there were no juvenile courts. On the other hand you may be able to refer me to rules made under the Act of 1933 concerning the provision of proper buildings for holding juvenile courts. It is true that a juvenile court held on a day other than when adult courts sit can be held in the same building as the adult court but the difficulty in this division is the question of time spent at the courts, hence an arrangement that juvenile courts are held in the afternoons of days after the adult court has sat in the morning. The juvenile courts are therefore held in the magistrates' private room in order to comply with the Act.

Will you kindly let me have your views on the position and quote authorities. SPO.

*Answer.*

A juvenile court is a special kind of court of summary jurisdiction and is a petty sessional court, *see* Children and Young Persons Act, 1933, s. 45. In our opinion, therefore, the enactments relating to petty sessional court houses apply, as to which *see Stone's* notes, and cross-references to s. 30 of the Act of 1879.

**10.—Landlord and Tenant**—*Agricultural tenancy—Council as landlords requiring possession—Unexpired lease.*

The council have purchased by agreement a piece of land for allotment purposes which is the subject of an agricultural lease having fifteen years to run. The anniversary of the lease is the eleventh of this month. Your opinion would be appreciated as to whether the council can obtain possession of the land by a notice under the provisions of s. 23 (1) (*d*) (ii) of the Agricultural Holdings Act, 1948, and if so the length of the notice and when it should be given. The use of the land for allotments does not seem to be an agricultural use as defined in s. 94 of the Act. Are you aware of any other means by which possession can be obtained, otherwise than by agreement? ADS.

*Answer.*

We agree that the use for allotments will not be an "agricultural use" within the parenthesis in the proviso, and therefore the proviso applies to the council as landlords of the present tenant. The notice to be given to a tenant of an agricultural holding, where s. 23 does not apply, is the notice stipulated in the tenancy agreement. In the case before us, however, the tenant has a lease which still holds good for fifteen years. Compulsory powers are not being used, and we do not see how he can be got rid of otherwise than by agreement.

**11.—Magistrates**—*Practice and procedure—Indictable cases tried summarily—Award of costs under s.* 18, *Summary Jurisdiction Act*, 1848.

I was very interested to read your reply to "Stem" in P.P. 7 at 115 J.P.N. 462. As the question presumably related to an indictable offence, by reason of the fact that the inquirer mentioned no order for payment out of public funds was made, I shall be obliged if you will advise me whether in fact your reply was based on this assumption.

Recently in my court a defendant charged with an indictable offence and dealt with summarily, was ordered to pay certain costs including those for the attendance of witnesses. In due course I remitted the costs to the Chief of Police who instituted the proceedings but he contended that as it was an indictable offence the police finance arrangements did not provide for the receipt of these sums nor for the payment thereof to witnesses.

As I have a similar case pending, do you consider that relying on s. 18 of the Summary Jurisdiction Act, 1848, I can insist upon the Chief of Police accepting the costs? J. TENAX.

*Answer.*

We dealt with the question in the answer referred to on the basis of summary procedure only, although we did observe that there is an implication that it was an indictable offence tried summarily.

Views differ on the point, but we think that s. 27 (1) of the Summary Jurisdiction Act, 1879, imports into the procedure, when an indictable

offence is tried summarily, all the provisions relating to summary trials including the power to award costs under s. 18 of the 1848 Act. There is, of course, a concurrent power to make the orders permitted by the Costs in Criminal Cases Act, 1908, but this Act nowhere refers to or repeals, in such cases, the provisions of s. 18, *supra*, and we do not think that there is any necessary repeal by implication.

In our view, if the court made an order under s. 18 of the 1848 Act it is the duty of the clerk to pay over those costs, when recovered, to the prosecutor to whom they were awarded. We know, however, of no way in which the clerk can insist upon their acceptance by the Chief of Police. We have not heard the police point of view, but on the information in the question we cannot see why the costs in such cases cannot be dealt with as are costs awarded in purely summary cases.

**12.—Public Health Act, 1936**—*Common pipe leading to cesspool and thence into stream—Status of pipe.*

The premises numbered 1-10 on the enclosed plan are drained by a common six inch pipe to a cesspool constructed on land in private ownership and the overflow from the cesspool is discharged into a stream. The cesspool is in a bad state of disrepair and the question has arisen of the liability of the council to carry out the necessary work. It is understood that the drainage system as it now exists was constructed over fifty years ago by the owner of the ten properties in question and that he carried out any necessary works of maintenance to the system. During recent years however the whole of the premises have been acquired by different owners, one of whom contends that the pipe marked A—B including the cesspool is a public sewer, and that the council are liable for its maintenance, including the repair of the cesspool. In view of the unsatisfactory state of the case law on the subject as set out at p. 51 of *Lumley*, your valued opinion would be appreciated. ANE.

*Answer.*

Taking the cases as a whole, we should regard the pipe A—B as a sewer, vested in the local authority, the cesspool which interrupts its course being in the nature of a catchpit. We should say that the terminus *ad quem* (*see Lumley*, p. 51) is the outfall into the stream. This appears to be illegal, and the council accordingly to be in peril: *see* s. 30 of the Act, and *Lumley's* notes thereon.

**13.—Public Utilities Street Works Act, 1950**—*Notice by undertakers to highway authority—Service of notice when highway powers are delegated.*

A point of difficulty has arisen in regard to the relationship between the county council and an urban authority to whom certain county roads had been delegated under s. 35 of the Local Government Act, 1929.

The specific point is in regard to the notices which require to be served under the Act by statutory undertakers in regard to the carrying out of works. These notices have to be served on the highway authority and s. 39 of the Act recognizes in its definition of highway authority a claiming authority under s. 32 of the Local Government Act, 1929, but there is no specific reference to the delegated authority under s. 35 of the latter Act.

Section 36 (1) of the Local Government Act, 1929, appears to presume a degree of detailed control and interest on the part of the county council which is not applicable in the case of claimed functions under s. 32 of the Act, and it may be perhaps for this reason that a delegated authority is not mentioned in the same way as a claiming authority under the 1950 Act.

The point upon which an opinion is desired is whether in the case of delegated roads it is lawful for the county council to instruct statutory undertakers to serve their notices under the 1950 Act direct upon the delegated authority; in this connexion regard should be had to the provisions of s. 34 of the 1950 Act which deals with the service of notices.

I, as clerk of the county council, am doubtful whether such service direct on the delegated authority would be lawful, since it does not appear to be in any way authorized; on the other hand, the delegated authorities argue that it seems to be reasonable, and that there is no reason why it should not be done, and I am bound to agree that as a matter of administrative convenience it would be reasonable that the persons who have the immediate control and responsibility of the road should receive and deal with the notices.

There is the further point, whether, assuming that direct service on the delegated authority was unlawful in the sense of being unauthorized, there would be any harm done if all three parties concerned, *i.e.*, the county council, the delegated authority and the undertaker accepted the decision. A JOHNIAN.

*Answer.*

The distinction in the Act of 1950 between a claiming authority and a delegated authority must be intentional since s. 32 of the Act of 1929 is explicitly mentioned. On principle, we think a county council is nevertheless inherently entitled (as would be a commercial concern) to arrange that notices which it has a right to receive shall be delivered to its agents. We do not think statutory authority is needed for so arranging, or that any harm would be done so long as all parties were in unison; nobody would have ground to complain. But when extra-statutory arrangements are made, it is often found that technical questions can be raised, involving extra costs for arguing technical points if litigation results, should the parties get at loggerheads on some question not at first foreseen. Section 34 of the Act of 1950 says that notice to you is notice to your council: might it not be wiser for your council to give you a general direction to forward every such notice to the delegate authority, where a delegate authority has to act upon it? The service will then, as between the undertakers and your council, be what the Act provides; what happens between your council and the delegate authority will be between them alone and no business of the undertakers.

**14.—Road Traffic Acts**—*Accident, duty to report—Vehicle stationary.*

A car is drawn up on the side of a road and after the car had been stationary for some minutes the driver opened the off side door to get out and in doing so the door struck a cyclist who was passing, whereby injury was caused to the cyclist. The driver assists the injured cyclist by taking him to a doctor and both parties part without knowing of each others identity.

The question arises as to whether the driver must report the accident in accordance with s. 22 (2) of the Road Traffic Act, 1930.

At 98 J.P.N. 647 the opinion was expressed by you that s. 22 applies to both moving and stationary vehicles. If you are still of the opinion that this section applies to stationary vehicles how can it be held that the person opening the door is the driver for the purpose of this section, having regard to the interpretation of "driver" in s. 121 of the Road Traffic Act. S. JAXIU.

*Answer.*

We see no reason to revise the opinion expressed at 98 J.P.N. 647. The definition in s. 121 is inserted, it would appear mainly for the purpose of including a steersman, and when it goes on to refer to the person engaged in driving it means, as we understand it, the person who is actually driving at the moment or, as in this instance, the person who has been driving and is still in the driver's seat, and, apparently the person who will continue in the position of driver unless and until he hands over to someone else.

## OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. (*contd.*)

### COUNTY BOROUGH OF WEST HAM

**Appointment of Senior Assistant Solicitor**

APPLICATIONS are invited from Solicitors with experience in Local Government work for the above appointment. Salary Grade A.P.T. X (plus London Weighting).

Terms and conditions of appointment, with forms of application, may be obtained on request; and applications accompanied by copies of two recent testimonials must be received by first post on December 12 next.

G. E. SMITH,
Town Clerk.

West Ham Town Hall,
Stratford, E.15.

### SODBURY RURAL DISTRICT COUNCIL
**(Population 37,800)**

**Appointment of Clerk of the Council**

APPLICATIONS are invited from suitably qualified persons with wide experience in local government law and administration for this appointment at a salary of £1,350 rising by annual increments of £50 to £1,550, with other possible appointments.

Further particulars may be obtained from the undersigned by whom applications must be received not later than Saturday, December 29, 1951.

F. R. APPLEBY,
Clerk of the Council.

Council Offices,
Chipping Sodbury,
Near Bristol.

### BOROUGH OF LEIGH

**Appointment of Deputy Town Clerk**

APPLICATIONS are invited from Solicitors for the appointment of Deputy Town Clerk at a salary in accordance with Grade X of the National Salary Scales.

Applicants must have had considerable experience in Local Government Law and Administration, Conveyancing and Advocacy, and must be capable of acting without supervision.

The successful candidate will be required to devote the whole of his time to the duties of the office and will not be permitted to engage, directly or indirectly, in private practice or in any other business or profession.

The appointment, which will be subject to the National Scheme of Conditions of Service of Local Government Officers, to the provisions of the Local Government Superannuation Act, 1937, and to the successful candidate passing satisfactorily a medical examination, will be determinable by two months' notice on either side.

Every candidate must disclose in writing whether to his knowledge he is related to any member of the Council or to the holder of any senior office under the Council.

Canvassing of members of the Council, directly in indirectly, will disqualify.

Applications, which must be submitted on the form provided for the purpose, giving the names and addresses of two persons to whom reference may be made, must be delivered to the undersigned not later than by first post on Thursday, December 20, 1951.

ALBERT JONES,
Town Clerk.

Town Hall,
Leigh, Lancs.

### DURHAM COUNTY COMBINED PROBATION AREA COMMITTEE

**Appointment of Whole-time Male Probation Officer**

APPLICATIONS are invited for the appointment of a whole-time male Probation Officer for the Darlington area of the above County.

Applicants must not be less than twenty-three years of age nor more than forty years except in the case of whole-time serving officers. The salary and conditions of service will be in accordance with the Probation Rules, 1949/50.

Living accommodation is available for the use of the successful candidate if required.

Applications, giving particulars of age, education and experience, together with the names of two referees should reach the undersigned not later than December 22, 1951.

J. K. HOPE,
Secretary to the Committee.

Shire Hall,
Durham.

### COUNTY OF KENT

**Petty Sessional Division of Bromley**

**Appointment of Third Assistant Clerk**

APPLICATIONS are invited for the appointment of a male third assistant to the Clerk to the Justices.

Applicants should have sound knowledge of magisterial law and practice and be capable of taking a court.

The commencing salary is £500 per annum. The salary would be reviewed after the expiration of twelve months' satisfactory service.

Applications, stating age, present position and experience, together with two recent testimonials, should be sent to the undersigned not later than December 24, 1951. Envelopes should be marked "Assistant Clerk."

T. W. DRAYCOTT,
Clerk to the Justices.

The Court House,
South Street,
Bromley, Kent.

### COUNTY OF BERKS

**Appointment of Male Probation Officer**

THE Berkshire Probation Committee invite applications for the appointment of a male whole-time Probation Officer.

The appointment will be subject to the Probation Rules 1949 and 1950. Applicants must not be less than 23 nor more than 40 years of age, except in the case of a serving whole-time Probation Officer. Applicants should state whether they have, or are able to drive, a car. The selected applicant will be required to pass a medical examination.

Forms of application can be obtained by sending a stamped and addressed envelope to the undersigned, and must be returned not later than December 27, 1951.

E. R. DAVIES,
Secretary of the Berkshire Probation Committee.

Shire Hall,
Reading.
November 30, 1951.

### ESSEX PROBATION AREA

**Appointment of Assistant Principal Probation Officer**

APPLICATIONS are invited for the appointment of an Assistant Principal Probation Officer in the Essex Probation Area. Applicants must be fully qualified to perform the duties of a Senior Officer as specified in Rule 49 of the Probation Rules, 1949, and will be required to deputise for and assist the Principal Probation Officer. The Officer appointed will be required to undertake a certain amount of case work and to act as liaison officer at Courts of Assize and Quarter Sessions.

The appointment will be subject to the Probation Rules 1949 and 1950. The commencing salary will be £625 rising by annual increments of £25 to £700 a year.

Applicants should be able to drive a car.

The successful applicant will be required to pass a medical examination.

Applications, stating age, present position, qualifications and experience, together with copies of not more than three recent testimonials, must reach the undersigned not later than fourteen days after the appearance of this advertisement.

W. J. PIPER,
Clerk of the Peace and of the Probation Committee.

Office of the Clerk of the Peace,
Tindal Square,
Chelmsford.

### BOROUGH OF ABERYSTWYTH

**Appointment of Town Clerk**

APPLICATIONS are invited from solicitors with wide experience in local government law and administration for the above appointment at a salary within the range of Grade A.P.T. X (£870-£1,000) of the National Scale of Salaries. The commencing salary will be determined in accordance with the successful applicant's qualifications and experience.

The person appointed will be required to devote his whole time to the duties of the office

The appointment will be subject to:

(*a*) the provisions of the Local Government Superannuation Act, 1937, and modifications thereof;

(*b*) three months' notice on either side;

(*c*) the passing of a medical examination;

(*d*) the Scheme of Conditions of Service of the National Joint Council for Local Authorities' Administrative, Professional, Technical and Clerical Services.

Living accommodation will be made available if required.

Applications, endorsed "Town Clerk," giving full particulars of age, present and past appointments, qualifications and experience, together with the names of three persons to whom reference can be made should reach the undersigned not later than December 31, 1951.

Candidates should state whether to their knowledge they are related to any member of, or the holder of, any senior office under the Council.

Canvassing, directly or indirectly, will be deemed a disqualification.

H. D. P. BOTT,
Town Clerk.

Town Hall,
Aberystwyth.
December 3, 1951.

## COUNTY BOROUGH OF DARLINGTON

**Assistant Solicitor**

APPLICATIONS are invited for the appointment of Assistant Solicitor (junior of two) at a salary (according to the date of admission) in accordance with Grade A.P.T. Va-VII of the National Joint Council's Scale of Salaries. Applicants will be required to have experience in conveyancing and advocacy. Previous experience in the office of a local authority not essential. No Council housing accommodation is available. Applications, endorsed "Assistant Solicitor," with the names of two referees, must reach the undersigned before noon on December 17, 1951.

H. HOPKINS,
Town Clerk.

Houndgate,
Darlington.

## CITY OF MANCHESTER

**Prosecuting Solicitor**

SOLICITORS with the necessary experience are invited to apply for the position of Prosecuting Solicitor, at an inclusive salary of £1,010 rising by annual increments of £50 to £1,160 per annum.

Particulars about the appointment and a form of application may be obtained from my office.

The closing date for applications is December 28, 1951.

Canvassing in any form is prohibited.

PHILIP B. DINGLE,
Town Clerk.

Town Hall,
Manchester, 2.
December 4, 1951.



## CITY OF LEICESTER

**Appointment of Deputy Town Clerk**

APPLICATIONS are invited from solicitors with experience in local government administration for the appointment of Deputy Town Clerk.

Salary £1,850 rising, subject to satisfactory service, by two annual increments of £100 and one of £50 to £2,100 per annum.

The appointment will be subject to the provisions of the Local Government Superannuation Act, 1937, and the successful candidate will be required to pass a medical examination.

Applications, stating age, qualifications and experience and accompanied by copies of three recent testimonials, to be sent to the undersigned not later than January 6, 1952.

L. McEVOY,
Town Clerk.

Town Hall,
Leicester.
December, 1951.



## SOUTH WESTERN GAS BOARD

APPLICATIONS are invited for the following appointments in the Secretary and Solicitor's Department at 9a, Quiet Street, Bath:

(a) *Assistant conveyancing and common law clerk.*—Applicants must possess a sound knowledge and experience of conveyancing law and practice and common law and should be capable of dealing with conveyancing matters with only nominal supervision.

(b) *Administrative assistant.* — Applicants should have a knowledge of general office practice, be competent shorthand writers and thoroughly experienced in preparing and drafting minutes and reports, and be familiar with committee procedure. Experience of county court practice, though not essential, will be an advantage.

The salary for each of these appointments will be in accordance with Grade A.P.T. 8 of the Salary Scales of the N.J.C. for Gas Staffs (£540 per annum - £620 per annum).

Successful applicants may be required to pass a medical examination and the appointment will be subject to the provisions of such superannuation scheme as may be adopted by the Board.

Applications, stating the appointment for which application is made and giving the age, qualifications and experience, present appointment and salary of the applicant, together with the names of two persons to whom reference can be made, should be received by the undersigned not later than December 21, 1951.

W. N. CURTIS,
Secretary and Solicitor.

9a, Quiet Street,
Bath.
December 5, 1951.



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